

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST C. FLENTALL,

Plaintiff,

Case Number: 10-13353

v.

HONORABLE AVERN COHN

MOREY. et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 22)
AND
DENYING DEFENDANTS' MOTION TO DISMISS AS MOOT (Doc. 14)

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff, Ernest C. Flentall, a Michigan prisoner proceeding pro se, has sued several officials and employees of the Michigan Department of Corrections claiming his constitutional rights have been violated in retaliation for filing a grievance. The matter was referred to a magistrate judge for pretrial proceedings. Defendants filed a motion to dismiss the complaint. Doc. 14. After the motion was filed, plaintiff was granted permission to file an amended complaint, which plaintiff did. Doc. 20. Defendants then filed a second motion to dismiss based on the amended complaint, which is pending. Doc. 21. Under these circumstances, the magistrate judge issued a report and recommendation (MJRR), recommending that defendants' first motion to dismiss be denied as moot. Doc. 22.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the MJRR waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the MJRR and agrees with the magistrate judge.

III.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Defendants' motion to dismiss is DENIED AS MOOT.

SO ORDERED.

Dated: June 6, 2011

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Ernest Flentall, 215401, Bellamy Creek Correctional Facility, 1727 West Bluewater Highway, Ionia, MI 48846 and the attorneys of record on this date, June 6, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160